

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 7, 2022

1:34 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Robert Myers

COMMITTEE CALENDAR

SENATE BILL NO. 118

"An Act establishing the committee on nullification of federal laws; and providing a directive to the lieutenant governor."

- MOVED CSSB 118(JUD) OUT OF COMMITTEE

SENATE BILL NO. 187

"An Act relating to criminal law and procedure; relating to the crime of harassment; relating to the duty to register as a sex offender; amending the definition of 'sex offense'; relating to lifetime revocation of a teaching certificate for certain offenses; relating to the definition of 'domestic violence'; relating to multidisciplinary child protection teams; relating to arrest authority for pretrial services officers and probation officers; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 189

"An Act relating to sex trafficking; establishing the crime of patron of a victim of sex trafficking; relating to the crime of human trafficking; relating to sentencing for sex trafficking and patron of a victim of sex trafficking; establishing the process for a vacatur of judgment for a conviction of prostitution; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 118

SHORT TITLE: CMTE ON NULLIFICATION OF FEDERAL LAWS

SPONSOR(s): SENATOR(s) REINBOLD

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| 04/07/21 | (S) | READ THE FIRST TIME - REFERRALS |
| 04/07/21 | (S) | STA, JUD |
| 04/13/21 | (S) | STA AT 3:30 PM BUTROVICH 205 |
| 04/13/21 | (S) | Heard & Held |
| 04/13/21 | (S) | MINUTE(STA) |
| 05/04/21 | (S) | STA AT 3:30 PM BUTROVICH 205 |
| 05/04/21 | (S) | Moved SB 118 Out of Committee |
| 05/04/21 | (S) | MINUTE(STA) |
| 05/07/21 | (S) | STA RPT 1DP 4NR |
| 05/07/21 | (S) | NR: SHOWER, COSTELLO, KAWASAKI, HOLLAND |
| 05/07/21 | (S) | DP: REINBOLD |
| 05/14/21 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 05/14/21 | (S) | -- MEETING CANCELED -- |
| 02/02/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 02/02/22 | (S) | Heard & Held |
| 02/02/22 | (S) | MINUTE(JUD) |
| 02/11/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 02/11/22 | (S) | Heard & Held |
| 02/11/22 | (S) | MINUTE(JUD) |
| 03/07/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |

BILL: SB 187

SHORT TITLE: HARASSMENT; SEX OFFENDERS & OFFENSES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

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| 02/15/22 | (S) | READ THE FIRST TIME - REFERRALS |
| 02/15/22 | (S) | JUD, FIN |
| 02/23/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 02/23/22 | (S) | Heard & Held |
| 02/23/22 | (S) | MINUTE(JUD) |
| 02/25/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 02/25/22 | (S) | Heard & Held |
| 02/25/22 | (S) | MINUTE(JUD) |
| 03/02/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 03/02/22 | (S) | Scheduled but Not Heard |
| 03/04/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 03/04/22 | (S) | Heard & Held |
| 03/04/22 | (S) | MINUTE(JUD) |
| 03/07/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |

BILL: SB 189

SHORT TITLE: CRIME OF SEX/HUMAN TRAFFICKING

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

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|----------|-----|---------------------------------|
| 02/15/22 | (S) | READ THE FIRST TIME - REFERRALS |
| 02/15/22 | (S) | JUD, FIN |
| 02/28/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 02/28/22 | (S) | Heard & Held |
| 02/28/22 | (S) | MINUTE(JUD) |
| 03/02/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 03/02/22 | (S) | Heard & Held |
| 03/02/22 | (S) | MINUTE(JUD) |
| 03/04/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |
| 03/04/22 | (S) | Heard & Held |
| 03/04/22 | (S) | MINUTE(JUD) |
| 03/07/22 | (S) | JUD AT 1:30 PM BUTROVICH 205 |

WITNESS REGISTER

SENATOR LORA REINBOLD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 118.

ED KING, Staff
Senator Roger Holland
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes in SB 118, from Version A to Version B on behalf of the committee.

JOHN SKIDMORE, Deputy Attorney General
Office of the Attorney General
Criminal Division
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered legal questions during the hearing on SB 187.

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ACTION NARRATIVE

[1:34:45 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Kiehl, Hughes, Shower, and Chair Holland.

SB 118-CMTE ON NULLIFICATION OF FEDERAL LAWS

[1:35:18 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 118 "An Act establishing the committee on nullification of federal laws; and providing a directive to the lieutenant governor."

[SB 118 was previously heard on 2/2/22 and 2/11/22. Public testimony was opened and closed on 2/11/22.]

[1:35:47 PM](#)

SENATOR LORA REINBOLD, Alaska State Legislature, Juneau, Alaska, sponsor of SB 118, said the Alaska Constitution helps confine the state and federal government. She noted that author Thomas E. Woods, Jr. stated that nullification is not unconstitutional. She stated that Amendments 6, 7, and 10 support this type of effort.

[1:36:28 PM](#)

SENATOR SHOWER made a motion to move SB 118, work order 32-LS0563\B from committee [in error].

[1:36:45 PM](#)

At ease

[1:37:18 PM](#)

CHAIR HOLLAND reconvened the meeting.

[1:37:22 PM](#)

SENATOR SHOWER withdrew his motion to move SB 118 from committee.

[1:37:32 PM](#)

SENATOR SHOWER moved to adopt the proposed committee substitute (CS) for SB 118, work order 32-LS0563\B, as the working document.

[1:37:39 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[1:37:52 PM](#)

ED KING, Staff, Senator Roger Holland, Alaska State Legislature, Juneau, Alaska, reviewed the changes in SB 118, from Version A to Version B, on behalf of the committee, which read:

Sec 1: New section 1 in version B gives the committee the ability to introduce legislature through the Rules Committees.

Sec 2: Previously section 1. Version B makes the following changes:

- Committee membership is reduced from 14 members to 6 members
- Specifically assigns the Judiciary and State Affairs Committee chairs to the committee
- Provides a seat for a member from the largest minority caucus in each body (version A assigned a minority member based on party affiliation)
- Allows a member to request a review rather than requiring a review of every Federal action
- Limits meetings to the interim only
- Allows the co-chairs to consider staff availability before taking on a new review
- Expands the options of the committee actions to include
 1. Submitting resolution to withhold resources for enforcement
 2. Urging the Attorney General to file a lawsuit
 3. Drafting a nullification bill
 4. Introducing legislation counteracting the federal law
 5. Recommending the legislation take another action
- Deletes direction to Alaskans to ignore federal law

Sec 2 of version A was deleted.

[1:39:31 PM](#)

CHAIR HOLLAND removed his objection, found no further objection, and the committee substitute (CS) for SB 118, Version B was adopted.

[1:39:49 PM](#)

SENATOR KIEHL stated that although the committee substitute is a more streamlined approach that removes some of the more

troublesome provisions, it ultimately embraces the idea that a state can nullify federal law. Nullification was so widespread during the pre-Civil War Era that 1831 and 1832 were considered nullification crises. Thus, history has shown the trouble that nullification can cause. Since then, the US Constitution has been amended to clarify that states do not have the power to nullify federal laws. He stated that he favors some options in Version B, including resolutions and calling on the attorney general to file lawsuits, which would be an appropriate response. Still, the bill would set up a color of law to do something a state cannot do. He stated his opposition to moving SB 118 from committee.

[1:41:56 PM](#)

SENATOR HUGHES paraphrased the definition of nullify [at dictionary.com].

1. to render or declare legally void or inoperative:
to nullify a contract.
2. to deprive (something) of value or effectiveness;
make futile or of no consequence.

SENATOR HUGHES drew attention to the marijuana laws in Alaska. Alaska essentially nullified the federal marijuana laws. She offered her view that this sets a precedent for nullification. She emphasized that it doesn't mean the statute is removed from federal law, but it would be inoperative in Alaska. Since this has happened with marijuana laws in Alaska, she feels comfortable with the proposed bill.

[1:42:54 PM](#)

SENATOR SHOWER said he disagrees with Senator Kiehl about actions the state cannot take. He highlighted that the federal government wields the threat of withholding appropriations to states that do not comply with federal directives. For example, the federal government threatened to cut funding to states that refused to comply with COVID-19 vaccinations for the US Army National Guard members. It doesn't necessarily make directives right or prevent Alaska from asserting Alaskans' choices. He offered his belief that it is a legislator's right and duty to resist federal mandates when it's in the best interest of Alaskans. He emphasized that what works in Florida does not necessarily work in California. He highlighted that New York City is vastly different from Oklahoma farmland, so their citizens' needs are different. He advocated for states' rights. He stated that the federal government had usurped power since World War II (WWII), using money as a weapon. He viewed SB 118

as a means to consider and debate what federal laws Alaska citizens don't want to apply in the state, even if it means engaging in legal challenges or withholding state resources. He stated his intent to support the bill.

1:46:30 PM

SENATOR HUGHES offered her view that the Tenth Amendment was crafted to provide a check and balance between the state and federal government. She read the Tenth Amendment, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." She stated that rather than wait for the courts to rule on federal laws that violate the Tenth Amendment, the state could provide a check on the federal government. She said it is the legislature's duty to do so, and this bill is consistent with states asserting their rights.

1:47:34 PM

SENATOR SHOWER moved to report the committee substitute (CS) for SB 118, work order 32-LS0563\B, from committee with individual recommendations and attached fiscal note(s).

1:47:55 PM

SENATOR KIEHL objected.

SENATOR KIEHL noted that the bill differentiates between effective nullification, which Senator Hughes described, and nullification, which generally means interfering with federal enforcement actions. He said he largely agreed with Senator Shower's remarks, but those comments had little to do with the bill. Under *Printz v. United States*, Alaska does not have to accept federal funding, which Alaska has done previously. However, that is not a nullification issue. He maintained his objection.

1:48:50 PM

A roll call vote was taken. Senators Shower, Hughes, and Holland voted in favor of moving the committee substitute (CS) for SB 118, work order 32-LS0563\B, from committee, and Senator Kiehl voted against it. Therefore, CSSB 118 (JUD) was reported from the Senate Judiciary Standing Committee.

1:49:28 PM

SENATOR REINBOLD offered her view that members take an oath to protect individual liberties and that state sovereignty is critically important. She stated that the federal government impacts Alaska's resource development, mandates masking, and

often overreaches. She thanked members for hearing SB 118 since it is a vital issue to address.

1:50:01 PM

At ease

SB 187-HARASSMENT; SEX OFFENDERS & OFFENSES

1:52:24 PM

CHAIR HOLLAND reconvened the meeting and announced the consideration of SENATE BILL NO. 187 "An Act relating to criminal law and procedure; relating to the crime of harassment; relating to the duty to register as a sex offender; amending the definition of 'sex offense'; relating to lifetime revocation of a teaching certificate for certain offenses; relating to the definition of 'domestic violence'; relating to multidisciplinary child protection teams; relating to arrest authority for pretrial services officers and probation officers; and providing for an effective date."

[SB 187 was previously heard on 2/23/22, 2/25/22, and 3/4/2022.]

CHAIR HOLLAND solicited questions from members.

1:52:54 PM

SENATOR KIEHL said several provisions were unclear. He referred to Section 16 on page 12, lines 25-31. This section makes adjustments to House Bill 49 that the legislature considered several years ago, related to requirements for sex offender registry. He recalled that the Alaska Supreme Court raised some constitutional issues at the time. The legislature debated requiring sex offenders to register in Alaska even if their offense was not registerable in Alaska. He asked if there were any constitutional issues related to the Sex Offender Registry.

1:54:57 PM

JOHN SKIDMORE, Deputy Attorney General, Office of the Attorney General, Criminal Division, Department of Law, Anchorage, Alaska, related the constitutional issue was ex post facto, which means adding an enhanced or added penalty that is passed after someone has committed a crime. The Alaska Supreme Court ruled that sex offender registration could, in part, be deemed as punitive. However, ex post facto does not apply because [federal law] requires sex offenders to register in the state where they committed the crime. When the sex offender moves to Alaska, the statutes clarify that the same registration requirements carry over. Thus, Alaska is not adding to their

punishment. It would only be an ex post facto violation if the person were not required to register when convicted, and Alaska was trying to add to that requirement.

MR. SKIDMORE envisioned someone might challenge this requirement, but the department believes that Section 16 will not present any constitutional issues.

1:56:53 PM

SENATOR KIEHL asked if the person would be required to remain on the sex offender registry in the state where the conviction occurred after they moved to Alaska.

MR. SKIDMORE said he was unsure whether the person would need to register since they would no longer be a resident of that state. He reiterated that the punitive aspect requiring registration on the Alaska Sex Offender Registry arises at the time of their conviction. He was unsure whether all states' courts would follow the Alaska Supreme Court's finding that registration is punitive. The distinction is that the registration requirement already existed before the person moved to Alaska.

1:57:50 PM

SENATOR KIEHL stated he was not concerned about other states' court rulings. However, he was worried that someone would need to register for a sex offense that was not considered a sex offense in Alaska. He noted that if the person had done the deed in Alaska, they would not have to register. He related that the person would face a partially punitive element in Alaska by needing to register after the fact. He stated that concerns him from an ex post facto perspective.

1:58:42 PM

SENATOR HUGHES asked Mr. Skidmore to weigh in on Senator Kiehl's concern. She was unsure whether he was speaking about the timing of the requirement or if states have different requirements for sex offenders.

MR. SKIDMORE responded that Alaska law says that if a person is required to register in another state as a sex offender, the person will need to register in Alaska as a sex offender. He elaborated that this would apply, even if the crime that required the person to register in their state was not a crime requiring registering as a sex offender in Alaska. The rationale for Alaska's registration requirement was to avoid encouraging individuals to move to Alaska from any state to avoid registering as a sex offender.

SENATOR HUGHES replied that she understood the issue. She agreed that some risk for court challenges exists but that the punitive aspect disappears if someone moves to Alaska to avoid registration. She surmised that sex offenders could be enticed to live in Alaska. She expressed concern that Alaska could be a magnet for those wanting to avoid a sex registry in other states.

[2:01:12 PM](#)

CHAIR HOLLAND held SB 187 in committee.

SB 189-CRIME OF SEX/HUMAN TRAFFICKING

[2:01:23 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 189 "An Act relating to sex trafficking; establishing the crime of patron of a victim of sex trafficking; relating to the crime of human trafficking; relating to sentencing for sex trafficking and patron of a victim of sex trafficking; establishing the process for a vacatur of judgment for a conviction of prostitution; and providing for an effective date."

[SB 189 was previously heard on 2/28/22, 3/2/22, and 3/4/22. Public testimony was opened and closed on 3/4/22.]

[2:01:36 PM](#)

CHAIR HOLLAND solicited questions from members.

[2:01:43 PM](#)

SENATOR KIEHL referred to Section 22 on page 17 of SB 189, to sentencing someone for purchasing sex, which is a class A misdemeanor. He referred to AS 12.55.135(q)(1), which would impose a mandatory 72-hour minimum sentence. He asked if the person had been previously convicted two or more times, the lookback period would be infinity.

[2:02:51 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Department of Law, Anchorage, Alaska, stated that this subsection did not have a lookback period. He offered to review the statute, which he believed had a lookback period.

[2:03:27 PM](#)

At ease

[2:03:59 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:04:11 PM](#)

MR. SKIDMORE explained that AS 12.55.145(a)(3) relates to prior convictions, referring back to AS 12.55.135(g), which provides five years for previous convictions, so it is a five-year lookback period.

[2:05:09 PM](#)

CHAIR HOLLAND held SB 189 in committee.

[2:05:31 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 2:05 p.m.